

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO: 13-20067

HON. GEORGE CARAM STEEH

v.

D-2 TIMOTHY CROMER,

Defendant.

_____ /

GOVERNMENT'S SENTENCING MEMORANDUM

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Introduction

The story is all too familiar: a public official abuses his power for self-enrichment. Nonetheless, this is not the same old story because the Detroit Public Library is a majestic institution that has a unique place in the city's history and serves an irreplaceable role in the community.

As set forth below, Cromer conned his way to a top leadership position at the DPL, and then used his power to bilk it and the citizens to which the Library belongs. All told, Cromer awarded over \$5,000,000 in fraudulent contracts to his co-conspirators and pocketed about \$1,500,000 in kickbacks.

Below, this sentencing memorandum is presented in three parts: (1) the factual background; (2) the sentencing guidelines analysis; and (3) the analysis of the factors set forth under 18 U.S.C. § 3553(a). The factual background will detail the egregious nature of Defendant Timothy Cromer's crimes and abuses of his fiduciary obligations. The sentencing analysis will demonstrate that, although the plea agreement provides for a statutory maximum of 15 years, Cromer's otherwise applicable guideline range is 235 to 293 months of imprisonment. In order to satisfy the aims of § 3553(a), the Court should sentence to Cromer to 15 years of imprisonment.

I. **Factual Background**

“Parnassus on Main Street”

Mount Parnassus is a mountain of limestone in Greece that was considered a sacred source of inspiration in ancient times.¹ Although the book, *Parnassus on Main Street: A History of the Detroit Public Library*,² was written about 50 years ago, its subject continues to be worthy of the book’s title. From the time of the opening of the doors of the first Detroit Public Library in 1865 to this day, it has been a sacred source of inspiration. It remains a vital organ of the community-body despite the passage of almost 150 years.

The birth of the city of Detroit coincided with the birth of its public libraries. The government of Detroit, which was the nucleus of the Michigan Territory, was established after the War of 1812.³ Five years later, Detroit fathers Lewis Cass, Solomon Sibley, Austin Wing, William Woodbridge and John Monteith formed the Detroit Library Association, which established the City Library of Detroit.⁴ “In a sense it was a public library, because there were no restrictions on membership in the Library Association Anyone, regardless of class or station, could become

¹ *Mount Parnassus*, Encyclopedia Britannica (Oct. 11, 2013), <http://www.britannica.com/EBchecked/topic/444437/Mount-Parnassus>

² Woodford, Frank B. *Parnassus on Mainstreet: A History of the Detroit Public Library*. Detroit: Wayne State University Press, 1965.

³ *Id.* at 33-34.

⁴ *Id.* at 42.

a member and draw books if he had five dollars.”⁵ The importance of libraries to the education of Michigan citizens was set forth in the State’s founding documents: the educational article “of the Michigan Constitution of 1835, and all of its subsequent revisions, gave Michigan first rank among all states in recognizing the need for libraries as public responsibilities, and providing the means for financing them.”⁶

In 1865, the Detroiters arrived in “stovepipe hats and hoopskirts” to dedicate their first free public library, located in a building at Griswold and State that had previously been the Capitol of Michigan.⁷ By 1870, the library had grown in popularity, and the Library Committee boasted, “Of the free public libraries of the country, the Detroit Library ranks fourth in the number of volumes, and second in the amount of income.”⁸

In 1881, the Michigan legislature passed “[a]n act relative to free schools in the city of Detroit,” that permitted the board of education to elect a commission

⁵ *Id.* at 43.

⁶ *Id.* at 59. *See also* 2011 Michigan House Resolution No. 183, Michigan Ninety-Sixth Legislature (January 26, 2012)(“Whereas, Education has always been a priority in Michigan Michigan’s constitution was ahead of its time in the establishment of educational institutions and libraries. Article X called for township libraries to be funded by penal fines and fees paid for exemption from military duty.”)

⁷ *Id.* at 19-23.

⁸ *Id.* at 78, quoting Annual Report, Detroit Board of Education, 1869, Report of Committee on Library, p. 16.

to oversee its libraries. (Ex. 1, DPL incorporation documents).⁹ A 1901 statute went further by making the Detroit Library Commission an independent municipal corporation, and providing the “means for acquiring land and the construction of a public library building or buildings thereon, and the maintenance of the same.” (*Id.*)

After years of growing pains, the Detroit Library Commission began considering a location for a new building. In 1911, the site at Woodward Avenue and Kirby was identified as ideal because it was directly across the street from property that had been acquired for the planned relocation of the Detroit Institute of Arts (DIA).¹⁰ “[F]oreward-looking citizens began to get ideas about establishing a mid-town cultural center.”¹¹ The Commission intended for its new library to be an enduring paragon of public service:

What the Art Museum is doing is intended for all time to come.
What this board believes should be done for the public in the way of
a library should also be done for all time to come.¹²

The massive Cass Gilbert designed marble and limestone building that was completed in 1921 did not disappoint. “Those who visited the new Main Library

⁹ All Exhibits have been filed under seal.

¹⁰ *Parnassus* at 214-215.

¹¹ *Id.* at 215.

¹² *Id.* at 217, quoting Detroit Public Library, *Proceedings*, November 11, 1912.

on dedication day and the days following, beheld a thing of beauty and architectural splendor. From the standpoint of library planning, there probably was nothing to compare with it in the United States.”¹³

Today’s visitors of DPL’s Main Branch continue to behold a magnificent building filled with literature, art, music, modern computer technology and history.

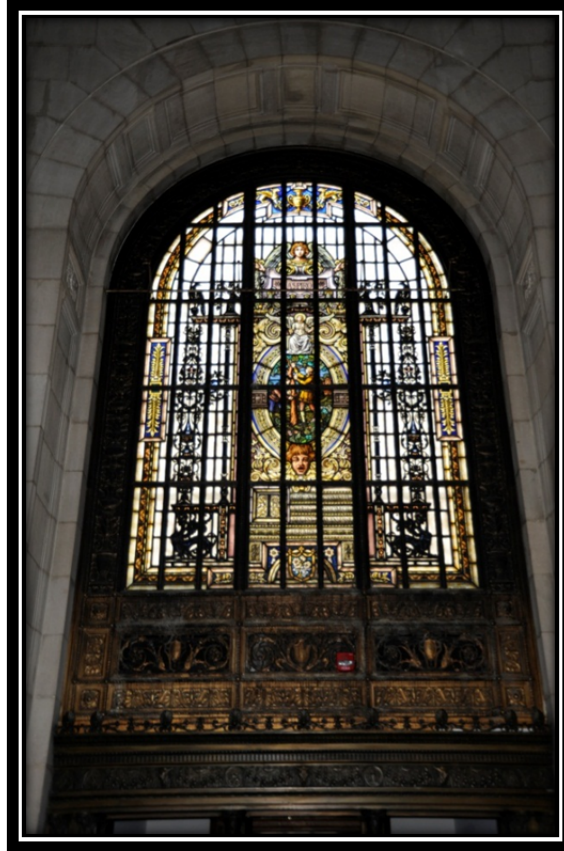


¹³ *Parnassus* at 226.









Stunned by the art nurtured within the walls of the Main Branch, DIA docent Barbara Cohn inaugurated a tour in March of this year called: “Discover the Wonders of the Detroit Public Library: An Art and Architectural Tour.”¹⁴ The tour attendance exceeded expectations, and has left visitors awestruck.¹⁵ Notably, the uncommon beauty on display in the Main Branch is available for the consumption of the common people. It remains a nonpareil Detroit gem cultivated for the benefit of its public for all time to come.

¹⁴ See Ex. 2, Tour Brochure; Laura Berman, *Barbara Cohn Inaugerates Popular Detroit Public Library Tours*, Red Tape Blog (March 28, 2014), <http://blogpublic.lib.msu.edu/index.php/march-28-2014-barbara-cohn?blog=5>)

¹⁵ *Id.*

Main Branch visitors discover the world through books and magazines distributed among numerous inviting sections, including Literature; Social Science, Education & Religion; Business, Science & Technology; the HYPE (Helping Young People Excel) Teen Center; and the Children's Library. Music aficionados and students may access sheet music material dating back to the mid-1600s, and audio recordings both old and new. Special collections that are treasured both locally and nationally include:

- The Burton Historical Collection, established 100 years ago, which includes “photographs, maps, genealogical materials, manuscripts, records of organizations, businesses and churches, and the governmental archives of the Detroit and Wayne County.”¹⁶
- A Rare Book Collection, in which “first editions, fine bindings, illuminated manuscripts and incunabula (books printed during the earliest period of typography” have been collected since 1948.¹⁷
- The E. Azalia Hackley Collection, a special black music collection established in 1943 by the Detroit Musicians Association.¹⁸
- The Ernie Harwell Sports Collection, established in 1966 when the great sportscaster made an initial donation of materials to the DPL.¹⁹
- A large collection of federal legislative, legal and other documents that the DPL maintains as a part of its membership in the Federal Depository Library Program since 1868.²⁰

¹⁶ Ex. 3, DPL Fact Sheet at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

In addition to its iconic Main Branch, the DPL has 21 neighborhood branches to service the community and help address the city's 21st Century educational and employment deficiencies. "The needs of Detroiters cannot be ignored: literacy rate is low and unemployment rate is high. . . By providing 22 easily accessible locations throughout the city, libraries offer services and activities for children, teenagers, adults and seniors."²¹

The 334,510 active DPL cardholders who visit the 22 branches are able to view or borrow some of the 7,201,680 items in the library collection, or log-on to one of the more than 700 computers.²² Those computers, the Technology, Literacy and Career Center (TLC) and the Detroit Reads! program help adults and students develop English and technological literacy, and prepare employment and financial aid applications.²³

The Library on Wheels has been operating since 1940, and it serves Detroit's seniors, homebound customers and schools.²⁴ The Junior Great Books program also has been a mainstay in the DPL system for almost 50 years.²⁵

²⁰ *Id.* at 3.

²¹ *Id.* at 6.

²² *Id.* at 5.

²³ *Id.* at 3-4.

²⁴ *Id.* at 3.

²⁵ *Id.* at 4.

This summer, the DPL is partnering with the Detroit Public School systems to waive past library fines, and to offer free, special library cards to students.²⁶ Current DPL Executive Director Jo Anne Mondowney expects about 20,000 children to use them in the annual summer reading programs.²⁷ Mondowney notes, “A library card is a passport to the world Children who read succeed.”²⁸

Incredibly, despite the modern-day challenges facing the city of Detroit – including population loss, loss of student population, lower property tax revenues and bankruptcy – the DPL remains the fourth largest library in the nation in terms of the volume of its material.²⁹ The continued vitality of the library has not occurred by happenstance; dedicated public servants and engaged patrons have nurtured and preserved the library and its services in a manner that is in keeping with its history and vital role in the community.

Timothy Cromer was not one of them. For Cromer, the DPL was a means of personal financial enrichment rather than cultural and educational enrichment of

²⁶ Rochelle Riley, *Detroit Library Offers Break to Scofflaws*, Detroit Free Press (July 15, 2014), <http://www.freep.com/article/20140715/COL10/307150057/Detroit-library-amnesty>

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ex.3, DPL Fact Sheet at 1.

the citizens of Detroit. His intentional misappropriation of millions of the library's precious and limited resources is described in the sections, below.

Cromer Lured James Henley into his Fraudulent Scheme

James Henley needed help. After serving as an account manager for a staffing agency, he and his girlfriend Tammie Porter were trying to start their own business, which they named T&J Staffing. Henley lined up a potential customer, but he and Porter did not have enough money to finance the contract. So, Porter suggested that Henley talk to Timothy Cromer. (Ex. 4, Henley 4/24/13 report at 1; Ex. 5, Porter 4/3/12 report at 1).

Henley and Porter were acquainted with Cromer because Porter's and Cromer's sons played together on a basketball team that Henley coached. (*Id.*) Porter told Henley that Cromer had owned a successful computer business and sold it for a lot of money. (Ex. 4, Henley 4/24/13 report at 1).³⁰ In early 2007, Porter took Henley to Cromer's house in West Bloomfield, Michigan. (*Id.* at 1; Ex. 5, Porter 4/3/12 report at 1). Henley approached the door alone, and knocked. After Cromer answered the door, holding a gun in each hand, he invited Henley

³⁰ According to Porter, she knew at the time that Cromer was also employed by the DPL. (Ex. 5, Porter 4/3/12 report at 1). However, Henley insists that he did not know about Cromer's affiliation with the DPL at that time. (Ex. 4, Henley 4/24/13 report at 2).

in. (*Id.*) Cromer told Henley that he would help him with his business on the condition that they would be partners and split the profits 50/50. (Ex. 4, Henley 4/24/13 report at 1).

With that agreement, Cromer began mentoring Henley. Cromer suggested that Henley change the name of his company so as not to be pigeonholed. Hence, with Cromer's guidance, Henley incorporated Core – Consulting & Professional Services Inc. on January 24, 2007; despite their profit-sharing arrangement, Henley was identified as Core's sole owner. (*Id.*; Ex. 21, Core Articles of Incorporation). Then, Cromer urged Henley to bid on a contract to provide network infrastructure services to the Detroit Public Library, despite the fact that Henley knew nothing about that field. Cromer prepared the bid, and Henley signed it. (Ex. 4, Henley 4/24/13 report at 1-2). At the time, Henley had no idea that Cromer worked at the DPL. (*Id.* at 2).

A DPL employee named Rose invited Henley to make a presentation in support of Core's bid. While the presentations provided by the two other bidders were sophisticated, Henley had only a binder with documents to offer. He knew that he was out of his league. (*Id.* at 2). Nonetheless, two weeks later, Rose notified Henley that he had won the contract. Henley called Cromer to share the good news and Cromer showed no surprise. (*Id.*)

Henley went to the DPL to sign the contract, and that is when he realized that he was a pawn. He saw that Cromer was a DPL official and that Rose was his secretary. Henley's silent "partner" had rigged the process so that Core would win the bid. (*Id.*)

Cromer Conned the DPL from the Beginning

Cromer's employment with the DPL was a product of deception from the start. Specifically, Cromer's representations to the DPL regarding his educational and employment history prior to beginning work there appear to have been fiction.

Having been born in 1966, Cromer would have been expected to graduate from high school in 1984. However, as reported in the Presentence Investigation Report (PSR), he dropped out of Cooley High School after his sophomore year, which would have been 1982, and did not earn a General Education Development (GED) certificate until 1990. (PSR at ¶ 72). Cromer reported to the probation officer that he taught himself computer programming with materials that a neighbor gave him. (*Id.* at 74). Additionally, he told the probation officer that he enrolled in Wayne State University (WSU) in 1991 to study Business Information

Systems, but did not earn a bachelor's degree until December 2013 – after he was terminated from the DPL. (*Id.* at ¶ 73).

In contrast to the information Cromer gave the probation officer in the PSR, Cromer signed an application with the DPL on April 2, 2002 indicating that he received a high school diploma from Cass Technical High School in 1984, received a “BS/M.S. info sys. management” from WSU in 1992, and had taken 15 months of “Doc. courses” from the University of Michigan and LTU, presumably Lawrence Technological University, from 1998 to 2000. (Ex. 6, Cromer Personnel File at 1876-1877). He provided the DPL with yet another version of his educational background in the resume that accompanied his application, in which he wrote that he had been a student at Wayne State University since 1993, had attended Detroit College of Business in 1989, and had studied Business Operations & Finance at “American Management Associations” from 1993 to 1995. (*Id.* at 1873).

According to the Presentence Investigation Report, Cromer started NuVision Technology Corp. in 1997, and began working as a contractual employee of the DPL that same year. (PSR at ¶ 76). The PSR reports no employment prior to 1997. (*Id.*). However, in Cromer's resume, he claimed to the DPL that he operated NuVision from 1989 until 2001 and that, during that time, the company

“operated in 3 different states with a combined staff of 498 employees and with over 12 years of service.” (Ex. 6, Cromer Personnel Record at 1871). During an overlapping period from 1989 to 1994, the resume Cromer gave the DPL listed him as having been “Executive Director Strategic Systems” for CMS Energy Corporation in Dearborn. He claimed a long list of accomplishments while serving in that capacity, including:

Senior Operating Executive with full strategic planning, operating and P&L responsibility for \$156M division of a \$22Billion Energy and Power organization. Spearheaded technology and business development initiatives and held autonomous decision-making authority for technology and information systems and administrative, finance, R&D, human resources affairs through 16 direct and 313 indirect reports for managing and supporting operations in Ghana, South America, Congo, Morocco, and Hyderabad and Delhi, India.

(*Id.* at 1872).

Nancy Skowronski was the executive director of the DPL from May 2003 until her retirement in 2009, and was involved in hiring Cromer as a DPL employee. (Ex. 7, Skowronski 6/19/13 report at 1). Based upon Cromer’s representations, Skowronski believed that he had an MIS degree from WSU, was pursuing a library science degree from WSU, and had worked in IT positions overseas for CMS in the 1980s. (*Id.*)

When the DPL named Cromer its Director of Information Systems in October 2003, it had hired a conman. (Ex. 6, Cromer Personnel Files at 1869).

Cromer's Increasing Power

As the Director of Information Systems, Cromer's employment was at-will and he was paid a yearly salary of \$90,000. (*Id.* at 1864 & 1868). Three years later, Cromer was selected for the newly created position of Chief Administrative & Technology Officer (CATO) on September 19, 2006. (Ex. 7, Skowronski 6/19/13 report at 1-2; Ex. 6, Cromer Personnel Files at 1851-1852). This new role was a significant promotion: the Detroit Library Commission awarded Cromer a three year employment contract, agreed to pay him \$120,000 per year, authorized him to act in the Director's (Skowronski's) stead in her absence, and provided Cromer with a credit card for his exclusive use. (*Id.*). In less than three years as an employee with the DPL, Cromer had risen to the top of its management. (Ex. 8, 2006-2007 DPL Employee List).

As the CATO, Cromer had substantial authority over matters at the Detroit Public Library. He headed the DPL's business and finance, facilities, IT and human resource departments, whose Main Library second-floor offices were called "The Row." . (Ex. 9, Skowronski 7/2/13 report at 2). (*Id.*). Skowronski's office was on the other side of the second floor, and none of the employees in The Row

answered directly to Skowronski. (*Id.* at 1-2). Cromer's power also derived from the fact that Skowronski and the Commissions knew nothing about IT and could not knowledgeably question Cromer on those issues, and the fact that he formed closer ties with members of the Commission than did Skowronski. (Ex. 7, Skowronski 6/19/13 report at 2-3; Ex. 13, Norfolk 3/18/13 report at 5).

Cromer used his power within the DPL to create an atmosphere of fear and intimidation, and acted as if he owned the DPL. (Ex. 10, Bruni 3/2/12 report at 1-2; Ex. 11 Chambers 3/8/12 report at 1-2; Ex. 12, McElgunn 4/15/13 report at 3; Ex. 13, Norfolk 3/18/13 report at 3 & 5; Ex. 7, Skowronski 6/19/13 report at 3). He also abused his power for self-enrichment.

Henley Kicks Back Hundreds of Thousands to Cromer

On February 6, 2007, Cromer and Henley signed a "Consulting Agreement;" Cromer provided the only authorizing signature for the DPL. (Ex. 14, Core Contracts at DPL 2131 to 2141). Cromer did not disclose on this document or any other DPL document that he had a secret financial interest in Core's business with DPL. Moreover, despite the fact that Core had been incorporated only a few weeks earlier and Henley had no IT experience, the agreement falsely described Core as a contractor with "certain experience and contacts pertaining to Network redesign, cable installation for 24 remote sites and the Main Library, Website

Redesign and development, Intranet Development and Local Area Network Support.” (*Id.* at 2131). Core’s responsibilities under the agreement were vaguely described as being “an advisor in assisting [the DPL] in its Network Redesign and Network topology both for Main Library and its 24 branches (the ‘Consulting Services’).” (*Id.*).

In reality, Core was not supposed to be a consultant. Rather, Core was responsible for replacing cables in DPL’s main branch to the other branches, and updating DPL’s database and website. (Ex. 15, Smith 2/19/13 report at 1).³¹ The creative labeling of Core as a consultant was intended to allow Cromer to get around the requirement that contracts of more than \$3,000 be approved by the DPL Commission. (Ex. 16, DPL Requisitions Authorization).

Before a contract could be submitted to the Commission for approval, the DPL Purchasing Manager had to identify and advertise the scope of the project, and a review committee had to make a vendor recommendation. (Ex. 12, McElgunn, 4/15/13 at 1-2). Professional service contracts (PSCs) with consultants, auditors, architects, lawyers and the like were excepted from the normal requisitions authorization policy. (Ex. 16, DPL Requisitions Authorization).

³¹ Core Project Manager Al Smith noted that the project was opened ended with no clear plan, which made it difficult to ascertain whether the work was being timely completed. (Ex. 15, Smith 2/19/13 report at 1).

As the CATO, Cromer was responsible for approving PSCs. (Ex. 12, McElgunn, 4/15/13 at 2). Before Cromer became the CATO, PSCs were entered into under exigent circumstances, such as expenditures for “band-aid” safety fixes. (*Id.*).

With Cromer in authority, the mislabeled “consulting agreement” became effective and the DPL paid Core \$75,000 on March 7, 2007. (Ex. 17, Chart, DPL Payments to Core). By agreement with Cromer, Henley paid payroll, and then split the balance with Cromer. (Ex. 4, Henley 4/24/13 report at 3). So, on March 23, 2007, Henley caused an \$8,250 check from a Core bank account to be made payable to Dacrotek, LLC, a “Professional Services, Technology & Education Consulting” company that Cromer incorporated in 2005. (Ex.18, Chart, Dacrotek Payments; Ex. 19, Dacrotek Articles of Incorporation).

As with many aspects of Cromer’s history, the reason why he incorporated Dacrotek in 2005 is a mystery. However, from March of 2007 to September of 2008, the primary use of his Dacrotek bank account appeared to be to receive checks and electronic transfers from Core. (Ex. 18, Chart, Dacrotek Payments). Needless to say, Cromer made none of these payments known to DPL’s Director, Purchasing Manager or Commissioners.

Despite his subterfuge, Cromer’s plan to use Core to raid the DPL’s coffers soon ran into a snag. DPL employee Michael McElgunn is a Certified Public

Purchasing Officer who processes requisitions for requests for proposals and purchase orders. (Ex. 12, McElgunn 4/15/13 report at 1-2). In April 2007, McElgunn received a requisition for a purchase order for Core that was not accompanied by Commission minutes demonstrating its approval. (*Id.* at 3). Despite the fear of crossing Cromer, McElgunn sent him an email telling him that the contract with Core was improper. (*Id.*)

In response, Cromer called a meeting and told McElgunn that Cromer had been ready to fire McElgunn as a result of the email, but had calmed down. (*Id.*) Cromer thanked McElgunn for bringing the matter to his attention. (*Id.*) McElgunn speculates that Cromer realized that he (McElgunn) was a union member who could not be fired. (*Id.*)

Cromer solved the problem presented to him by McElgunn by providing false representations to the DPL Commission in order to have Core's contract approved. An April 17, 2007 report from the Finance Committee shows that Cromer represented that the network infrastructure upgrades that Core would provide were qualified for federal E-rate program funding, and that a request for proposal was placed on a federal website to solicit bids. (Ex.20, DPL Minutes –

Core Solutions at 1).³² Cromer listed several vendors who allegedly made bids, and represented that Core's bid was the lowest. (*Id.* at 1-2). Everything about this Finance Committee report was a lie.

Federal E-rate funding is for telephone and internet services, not for updating network infrastructure, website or databases. (Ex. 22, Mondowney 4/22/13 report at 1-2).³³ The work done by Core would not have qualified for E-rate funding, and the contract that Core was awarded was never advertised to bidders on the federal website. (*Id.* at 2). As a result, while the DPL qualified to have federal funding for 90% of its E-rate eligible telephone and internet services, all of the payments to Core were paid from DPL accounts. (Ex. 22, Mondowney 4/22/13 report at 1; Ex. 17, Chart, DPL Payments to Core; Ex. 13, Norfolk 3/10/13 report at 4).

Commissioner and Finance Committee Chair Carol Quarterman supported the April 17, 2007 report, but she relied entirely on the information that she had

³² Ex. 20 contains verbatim language from the DPL minutes that reference Core on the dates identified.

³³ The formal name for the E-rate program is the Schools and Libraries Universal Services Support mechanism. The list of eligible services for E-rate funding for 2007 can be found at: http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101906.pdf. The list includes installation of cable and other components "only if they are an essential element in the transmission of information within the school or library," and basic maintenance of internal connections that are necessary for the continued functionality of the connection at eligible locations. (*Id.* at 9 & 17).

received from Cromer and had no idea that Core had already performed work and had been paid under a professional services contract. (Ex. 23, Quarterman 4/15/13 report at 2-3). She also believed that the DPL's Purchasing Department had vetted Core, and was unaware that Core was so inexperienced. (*Id.* at 3).

Having fooled the Commission, Cromer secured a contract for Core for \$712,000. Two contract expansions followed on September 18, 2007 – one for \$508,000 and the other for \$447,000 – despite the fact that Henley was increasingly absent from the worksites and did little to nothing when he was present. (Ex. 20, DPL Minutes – Core Solutions at 2; Ex. 4, Henley 4/24/13 report at 3; Ex. 15, Smith 2/19/13 report at 1; Ex. 5, Porter 4/3/12 report at 2).

In January 2008, Henley's breakup with his girlfriend Tammi Porter precipitated the end of Core's contracts with the DPL. A furious Porter called the DPL to report that Henley was stealing from the DPL, which was interpreted as meaning that Henley was stealing equipment. (Ex. 5, Porter 4/3/12 report at 3). Cromer took advantage of the misunderstanding to stage a firing of Core with witnesses. (Ex. 24, 1/3/08 Meeting Minutes; Ex. 13, Norfolk 3/18/13 report at 4). Cromer proclaimed that the Core's contract with the DPL was suspended immediately pending an investigation, that Core staff needed to turn in all keys,

badges and DPL identity documents, and that Core's last invoice should not be paid pending the investigation. (*Id.*)

Consistently with Cromer's directive, Core employees turned in their badges and no one from Core could perform work at the DPL. (Ex. 4, Henley 4/24/13 report at 4; Ex. 25, Hearn 5/2/13 report at 2³⁴). Yet, contrary to Cromer's statements during the January 3 meeting, Cromer approved a Core invoice on January 9, 2008. (Ex. 17, Chart, DPL Payments to Core Solutions). More outrageously, Cromer directed Henley to fabricate and submit invoices totaling \$308,865 from March 2008 to September 2008 despite the fact that Core was doing no work for the DPL at all.³⁵ (*Id.*; Ex. 4, Henley 4/24/13 report at 4). As a result, Cromer received more than \$150,000 in additional kickbacks from funds that were essentially stolen from the DPL. (Ex. 18, Chart, Dacrotek payments; Ex. 26, Chart, 2008 Cash Transactions).

In June 2009, Cromer fraudulently convinced the DPL Commission that the \$308,865 payments to Core were a result of cost overruns, and the Commission approved of the payments retroactively. (Ex. 20, DPL Minutes – Core Solutions at 2-3).

³⁴ Richard Hearn is identified as "Source" in the attached report.

³⁵ However, as will be set forth below, Cromer arranged for Henley to use some of the money that he was receiving to pay Ricardo Hearn for work at the DPL, outside of any official contractual arrangement.

In total, the DPL paid Core \$2,160,926.17, and Cromer received more than \$700,000 of those funds in kickbacks from Henley. (Ex. 17, Chart, DPL payments to Core Solutions; Ex. 18, Chart, Dacrotek payments; Ex. 26, Chart, 2008 Cash Transactions).

Ricardo Hearn Kicks Back Hundreds of Thousands to Cromer

Core was not the only company Cromer used to steal precious money from the Detroit Public Library. He also used a company called Cubemation, owned by Ricardo Hearn. Hearn met Cromer in 2005, when he worked on a website project for Cromer's then wife. (Ex. 27, Hearn 12/11/12 report at 1). Cromer invited Hearn to have his company, Cubemation, bid on a project at the DPL. (*Id.* at 2). After submitting the bid, Cromer told Hearn that he needed to kickback 33% of the profit, and Hearn agreed. (*Id.*) However, Cubemation was disqualified because it lacked a hardline telephone and sufficient insurance. (*Id.* at 2 & 4). In approximately August of 2007, Cromer referred Hearn to Henley as someone to assist Core with the DPL's website. (Ex. 4, Henley 4/24/13 report at 4; Ex. 27, Hearn 12/11/12 report at 3).

In July of 2008, after Core's contract with the DPL was terminated, Cromer called Hearn to say that he wanted Cubemation to complete the web design project. (Ex. 27, Hearn 12/11/12 report at 4). A Personal Services Contract was

signed that month between the DPL and Cubemation, with Cromer once again providing the only DPL authorizing signature. (Ex. 28, Cubemation-DPL Contracts at DPL 811-814). At Cromer's instruction, the PSC was backdated to June 2008. (*Id.* at 814; Ex. 25, Hearn 5/3/13 report at 2). Additionally, Cromer instructed Hearn to bill Core for Cubemation's work at the DPL until the contract was finalized. (Ex. 25, Hearn 5/3/13 report at 2).

A condition of the contract that was not reduced to writing was the requirement that Hearn pay Cromer kickbacks. Cromer gave that directive in person, and told Hearn that Henley's failure to pay him (Cromer) caused Core to lose its DPL contract. (Ex. 27, Hearn 12/11/12 report at 5). Cromer specified that he wanted \$1,200 per week. (*Id.*) A spreadsheet that Hearn created and regularly updated details the kickbacks to Cromer, and shows that the first \$1,200 kickback was made on July 26, 2008. (Ex. 29, Hearn 11/20/12 report at 6; Ex. 30, Hearn Spreadsheet). The amounts steadily grew to \$17,000 at the end of Cubemation's contract with the DPL in October 2010. (*Id.*).

The issue of the Cromer-approved PSC's came to the attention of the Commission on June 23, 2009, as a result of a report by a former employee. The employee had reported that a no-bid contract had been approved to Cubemation in the amount of \$835,000. (Ex. 31, DPL Minutes – Cubemation at 1; Ex. 36,

Montgomery 1/10/14 report at 1-2.) In response to Commissioners suggesting that they should have approved of such large contracts, Cromer pretended that Cubemation had been awarded the contracts after an above-board competitive bid: “Mr. Cromer said the law recognizes that the Commission empowers the Director to decide on such contracts. The contracts still go through a competitive bid process. The Director can select from those quotes. The Purchasing Department has specifications and lists of appropriate vendors.” (*Id.*) Rejecting Cromer’s analysis, the Commission voted that all PSCs were required to be brought before the entire Commission. (*Id.*)

Nonetheless, even after the vote clarifying that the Commission must approve PSCs, Cromer authorized a purchase order for Cubemation pursuant to a PSC on June 30, 2009, and signed another PSC with Cubemation without Commission approval on July 1, 2009. (Ex. 32, Chart, Cubemation Payments; Ex. 28, Cubemation Contracts at DPL 844-847).

On February 16, 2010, the Commission approved a PSC with Cubemation that included the initial two phases that were allegedly already completed. (Ex. 31, DPL Minutes – Cubemation at 1-4). Cromer told the Commission that the DPL had already paid Cubemation a total of \$1,615,000. (*Id.* at 4). In truth, the amount paid to Cubemation by February 2010 was over \$2,000,000. (Ex. 32,

Chart, Cubemation payments). And, of course, Cromer did not disclose that he had received hundreds of thousands of dollars of the DPL payments to Cubemation.

Due to lost tax revenues, the DPL sent a letter to Cubemation in October 2010 stating that its contract was being terminated. (Ex. 31, DPL Minutes – Cubemation at 4). The Commission did not learn until March 2011 that Cubemation had been advanced \$125,000 and that, as a result, the \$835,000 allotted under the contract was depleted even though Cubemation did not complete the project. (*Id.* at 4-5). In fact, Cubemation received its final payment of \$135,975 on November 10, 2010 (after the contract had been terminated), and Cubemation received \$95,844 over the contractually approved purchased orders of \$2,952,120.³⁶

Of the more than \$3,000,000 the DPL paid to Cubemation, Hearn kicked back about \$797,000 to Cromer. (Ex. 29, Hearn 11/20/12 report at 6; Ex. 30, Hearn Spreadsheet).

³⁶ Despite being overpaid and kicking back hundreds of thousands to Cromer, Hearn sued the DPL in May 2011, claiming that he was owed \$184,861 for services rendered under the contract. (Ex. 31, DPL Minutes – Cubemation at 4).

II. Application of Sentencing Guidelines

Cromer was a Public Official

Pursuant to U.S.S.G. § 2C1.1(a)(1), the base offense level for a “public official” who has accepted bribes is 14. According to § 2C1.1(a), n.1, a “public official” is construed broadly” and includes employees of state or local government, or any department or agency thereof, or anyone who is “in a position of public trust with official responsibility for carrying out a government program.” There is no question that Cromer was an “employee” of the DPL from October 2003 to November 2012. (Ex. 6, Cromer Personnel File at FBI 1831 & FBI 1869). Therefore, the only question is the nature of the DPL.

There are few institutions as fundamentally public as the Detroit Public Library. Public libraries are ingrained in the Michigan Constitution, which mandates, “All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.” MI Const. 1963, Art. VIII, § 9. Pursuant to this provision, a library’s entitlement to receive penal fines “is not dependent upon the discretionary act of any other official.” *Saginaw Pub. Libraries v. Judges of 70th Dist. Court*, 118 Mich. App. 379, 385-86 (1982).

The DPL has been specifically identified as a public institution for more than one hundred years, having been statutorily incorporated in 1881 and 1901. (Ex. 1, DPL incorporation documents). As a public library, the DPL's entire interests belong to the general public by statute. M.C.L. § 397.552(d). That makes sense, given the fact that "funding for the library is primarily generated through a dedicated millage, approved by the citizens of Detroit." (Ex. 3, DPL Fact Sheet at 1).

In other words, the funds that Cromer stole from the DPL belonged to the citizens of Detroit. He was only able to perpetuate his schemes because of he was a public official who was entrusted to faithfully exercise his substantial authority for the benefit of the DPL and the residents of Detroit.

The Value of the Benefit Received was More Than \$2,500,000.

Cromer should receive an additional eighteen points pursuant to § 2C1.1(b)(2) and U.S.S.G. § 2B1.1, because the value of "the benefit received in return" for the kickbacks easily exceeded \$2,500,000. The "value of the 'benefit received or to be received' means the net value of such benefit." U.S.S.G. § 2C1.1(b)(2), n. 3. The net improper benefit is determined by deducting direct costs from the gross benefit received. *United States v. Gray*, 521 F.3d 514, 543 (6th Cir. 2008) ("Courts must subtract direct costs from the gross value of the

contract to determine the net improper benefit.”); *United States v. Griffin*, 324 F.3d 330, 366 (5th Cir. 2003)(“We have stated that these examples make clear that ‘direct costs should be deducted from the gross value of the contract.’”). The Court is instructed to “not deduct the value of the bribe itself in computing the value of the benefit received.” § 2C1.1(b)(2), n. 3.

The gross value of Core Solutions contracts were \$2,160,926.17 and the gross value of the Cubemation contracts were \$3,047,964.25. (Ex. 17, Chart, Core Solutions; Ex. 32, Chart, Cubemation). Thus, the gross value of all of the fraudulently derived contracts was \$5,208,890.42. As set forth in the Presentence Investigation Report (PSR), investigating agents who have reviewed the financial records have determined that direct costs associated with those contracts totaled about \$1,295,000. (PSR at ¶ 18). Given that, the government estimates that the net value of the benefit received was \$3,913,890.42. Although this figure is an estimate, the net value of the benefit received “need not be determined with precision.” *Gray* at 543.

In order to find that the net value of the benefit received was less than \$2,500,000, the Court would have to find that more than half of the \$5,208,890.42 in contractual payments to Core and Cubemation went toward

direct costs. Such a finding would defy common sense, especially since Cromer received about \$1,500,000 of that money in kickbacks.

Cromer Was a Public Official With High-Level Decision-Making

Cromer should receive an additional four points to his offense level because he was a public official in a high-level decision making position. U.S.S.G. § 2C1.1(b)(3). A high-level decision-making position is “characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.” § 2C1.1, cmt. n. 4(A). Examples of a high-level decision maker include an agency administrator. §2C1.1, cmt. n. 4(B).

In *United States v. Watkins*, 691 F.3d 841, 845 (6th Cir. 2012), a § 2C1.1(b)(3) enhancement was properly applied to a supervisor of security-systems contracts for a school district. The supervisor had “substantial influence over the decision-making process” because he was responsible for narrowing down and recommending vendors, he could stop payment on invoices, and a supervisor relied on his expertise and input when making decisions. *Id.* In this case, the facts more readily indicate that Cromer was a high-level decision-making public official than in *Watkins*.

Cromer was the Chief Administrative & Technology Officer of the DPL who was authorized to act in the Director's stead in her absence. (Ex. 6, Cromer Personnel Record at 1851-1852). Cromer headed the DPL's business and finance, facilities, IT and human resource departments whose Main Library second-floor offices were called "The Row." (Ex. 9, Skowronski 7/2/13 report at 2). (*Id.*). The employees in the Row answered directly to Cromer rather than Skowronski, whose office was on the other side of the second floor. (*Id.* at 1-2). Simply put, Cromer was at the top of the DPL management. (Ex. 8, 2006-2007 DPL Employee List).

Cromer used his position to sign Personal Services Contracts as the sole DPL authorizer, and to have requisitions for purchase orders approved without the approval of the Commission. The Court should find that Cromer was a high-level decision maker to which § 2C1.1(b)(3) applies.

Cromer's sentencing guideline range

The government concurs with the analysis set forth in the PSR that, based upon an offense level of 37 and a criminal history category of II, the guideline imprisonment range would have been 235 to 293 months. However, since Cromer was permitted to plead guilty to only Counts 2 and 7 pursuant to the plea

agreement, the statutory maximum is 180 months, and that becomes the guideline range pursuant to U.S.S.G. §5G1.1(c)(1).

III. Analysis of the factors under 18 U.S.C. § 3553(a)

The Nature and Circumstances of Cromer's Crimes (18 U.S.C. § 3553 (a)(1))

Cromer's sentence should reflect the seriousness of the unconscionable violations of his fiduciary obligations.

As the CATO, Cromer selfishly put Henley in charge of a multimillion dollar technology project even though he knew that Henley was wholly unqualified.

Hearn was better qualified than Henley, but he had no experience helming a project as large as the one at the DPL. (Ex. 29, Hearn 11/20/12 report at 7).

Hearn was young and was trying to build his business, so he assumed that he would be given only a small share of the DPL contract. (*Id.*). Had the contracts at issue been subject to a competitive bidding process, there is no question that more qualified vendors would have been chosen.

The consequence for the DPL is that it received very limited value for the millions of dollars it paid to Core and Cubemation. (Ex. 33, DPL Petition for Remission of Forfeiture (Exs. D-H therein)). Other vendors had to complete Core's and Cubemation's work, and IT experts opined that their projects could have been

completed for less than \$150,000. (*Id.*) Making matters worse, Cromer failed to apply for E-rate funding, causing the DPL to pay approximately \$2.2 million that would have been approved by E-rate. (Ex. 22, Mondowney 4/22/13 report at 1-2).³⁷

The DPL could have put the wasted millions to better use. The DPL has faced dwindling revenues and has been running at a deficit since 2009. (*Id.* at 2). Further, as a consequence of Cromer's fraud and scandal it caused, more than eighty experienced staff members were laid off, retired or resigned in disgust. (*Id.* at 1; Ex. 34, DPL Human Resources Impact Statement at 1). Those were just the latest resignations caused by Cromer; others who worked with Cromer in "The Row" had resigned earlier due to his outrageous conduct and the fear that his conduct could incriminate them. (Ex. 35, Farms 3/14/12 report at 1-3; Ex. 11, Chambers 3/08/12 report at 1-3; Ex. 36, Montgomery 1/10/14 report at 1-2).

According to Mondowney, the DPL could have retained all of its customer support employees but for Cromer's misappropriation of funds and failure to apply for E-rate funding. (Ex. 22, Mondowney 4/22/13 report at 3). The

³⁷ For clarification, although Mondowney said that the DPL did not use E-rate in 2008, more than \$10,000 in E-rate disbursements were made in 2008 based upon 2007 approvals. (Ex. 38, Remittance Statement).

increased resignations and premature retirements cause “an unwelcome loss of institutional knowledge.” (Ex. 34, DPL Human Resources Impact Statement at 2).

In addition, as a result of Cromer’s conduct, the DPL was forced to close and consolidate branches, diminishing the access to library resources and services in the affected neighborhoods. (Ex. 22, Mondowney 4/22/13 report at 3). Given the local and even national press coverage of Cromer’s fraud, the DPL’s tarnished reputation was of significant concern, especially with its millage funding on the line. (*Id.*)³⁸

Fortunately, the DPL’s continuing value to the community overshadowed Cromer’s scandalous conduct, and 75% of the voters of Detroit approved the millage renewal on August 5, 2014.³⁹ Nonetheless, Cromer triggered real damage to an important Detroit institution, and his actions threatened to cause even more harm.

³⁸ See the examples of the media coverage:
<http://www.wxyz.com/news/detroit-public-library-executive-suspended-after-fbi-launches-investigation-into-alleged-corruption>;
<http://michronicleonline.com/2013/05/01/under-fire-detroit-public-library-stung-by-fbi-probe-fights-to-preserve-reputation/>;
http://www.huffingtonpost.com/2012/11/21/tim-cromer-detroit-public-library_n_2170745.html; <http://www.nbcbayarea.com/news/national-international/NATL-FBI-Raids-Detroit-Public-Library-180193161.html>

³⁹ See <http://www.freep.com/section/NEWS150101/Wayne-County-City-of-Detroit-election-results>

For these reasons, the Court should find that the nature and circumstances of Cromer's crimes support a significant sentence.

Cromer's history and characteristics (18 U.S.C. § 3553 (a)(1))

As set forth above, Cromer is a conman whose career before he joined the DPL is shrouded in mystery. Cromer tricked his way into a prime position at the DPL, and then earned the nickname "Slippery Tim" due to his deceitful conduct and abuse of power at every turn. (See, e.g., Ex. 11, Chambers 3/8/12 report at 1-3; Ex. 12, McElgunn 4/15/13 report at 2-3; Ex., 35, Farms 3/14/12 report at 2; Ex. 13, Norfolk 3/18/13 report at 4-5). He was described as a "gestapo," threatening employees to toe the line, and boasting about his ownership of firearms and ability to use them. (See, e.g., Ex. 37, Bruni 5/3/11 report at 3; Ex.11, Chambers 3/8/12 report at 1-3; Ex. 12, McElgunn 4/15/13 report at 4; Ex. 13, Norfolk 3/18/13 report at 4).

Cromer used his ill-gotten proceeds to finance an extravagant lifestyle, including a nice home, multiple fancy cars, watches and guns. (Ex. 37, Bruni 5/3/11 report at 2; Ex. 7, Skowronski 6/19/13 report at 4). As an extension of the fictitious history Cromer had reported to the DPL, he explained away the fact that he was living above his legitimate means by alleging that he had made a lot of money while working at CMS and NuVision. (Ex. 7, Skowronski 6/19/13 at 4).

It takes someone of particularly low character to see an institution as rich with history and essential to the community as the DPL only as an opportunity for self-enrichment. It took a megalomaniac like Cromer.

Seriousness of Cromer's Crimes, Just Punishment, and Respect for the Law (18 U.S.C. § 3553 (a)(2)(A))

A substantial prison sentence is necessary to reflect the seriousness of Cromer's crimes, to provide just punishment for those crimes and to promote respect for the law.

Public corruption such as that perpetuated by Cromer is a serious crime that harms our democracy. During President Theodore Roosevelt's State of the Union Address on December 7, 1903, he emphasized the profound damage that public corruption inflicts upon the government and its people.

There can be no crime more serious than bribery. Other offenses violate one law while corruption strikes at the foundation of all law. Under our form of Government all authority is vested in the people and by them delegated to those who represent them in official capacity. There can be no offense heavier than that of him in whom such a sacred trust has been reposed, who sells it for his own gain and enrichment He is as wicked as the murderer, for the murderer may only take one life against the law, while the corrupt official and the man who corrupts the official alike aim at the assassination of the commonwealth itself.

*2 State of the Union Messages of the Presidents 2081 (1966).*⁴⁰

Public corruption undermines the democratic process by increasing cynicism and voter apathy, and diminishing civic engagement.⁴¹

The government does not mean to overstate Cromer's contribution to the cynicism and voter apathy that plagues the Detroit metropolitan area. At the same time, the effects that these types of crimes have on our democratic process should not be minimized. Moreover, Cromer's corruption was uncommonly egregious, both in terms of the level of deceit and the amount of public money that he converted into a personal slush fund. The Court should find that a substantial sentence is necessary not only to sufficiently punish Cromer, but to promote respect for law.

Detering the Criminal Conduct of Others (18 U.S.C. § 3553 (a)(2)(B))

Imposing a significant prison sentence for Cromer also serves the important purpose of deterring future public officials in this district and beyond from engaging in similar misconduct. See 18 U.S.C. § 3553 (a)(2)(B). General deterrence has its greatest impact in white-collar cases, like this one, because these crimes

⁴⁰ This speech is available at:
<http://millercenter.org/president/speeches/detail/3775>

⁴¹ Daniel Stockemer, Bernadette LaMontagne & Lyle Scruggs, *Bribes and Ballots: The Impact of Corruption on Voter Turnout in Democracies*, 34 International Political Science Review 74-77, 83-84 (2013).

are committed in a more rational and calculated manner than sudden crimes of passion or opportunity. *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir.

2013)(quoting *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)). As a federal judge in Chicago stated:

We need not resign ourselves to the fact that corruption exists in government. Unlike some criminal justice issues, the crime of public corruption can be deterred by significant penalties that hold all offenders properly accountable. The only way to protect the public from the ongoing problem of public corruption and to promote respect for the rule of law is to impose strict penalties on all defendants who engage in such conduct, many of whom have specialized legal training or experiences. Public corruption demoralizes and unfairly stigmatizes the dedicated work of honest public servants. It undermines the essential confidence in our democracy and must be deterred if our country and district is ever to achieve the point where the rule of law applies to all --- not only to the average citizen, but to all elected and appointed officials.

United States v. Spano, 411 F.Supp.2d 923, 940 (N.D. Ill. 2006).

Unfortunately, the prosecutions and resulting penalties in past public corruption cases in this region have not been sufficient. They clearly did not dissuade Cromer from abusing his power to bilk the DPL, and the prosecution of other high-profile corruption cases did not convince him to operate within the law.

For many years now, the citizens of this region have endured corrupt governance as though it were an inevitable cost of living here. The perception

that “everybody does it” is misplaced and unfairly maligns the majority of public officials who serve honorably. Nonetheless, that misperception leads too many public officials to conclude that enriching themselves at the expense of their constituents is no big deal. After all, “[i]t is simply irrational for any single public official to be the only honest person in an unfair game that will not change.”

Stockemer, *supra* n 24, at 76.

For that reason, those inclined to follow the example of other corrupt public officials need to know that there are severe consequences for violating the public trust. A substantial sentence in this case will demonstrate to them and to the citizens of the region that corruption will be addressed seriously and deterred when discovered.

Protecting the Public from Further Crimes by Cromer (18 U.S.C. § 3553 (a)(2)(C))

As a result of the instant conviction, Cromer is unlikely to be rewarded positions of trust similar to those he held at the DPL. Nonetheless, Cromer has shown a proclivity and talent for deceit and corrupt self-dealing, leaving no confidence that he will not commit new crimes if given the liberty to do so.

Sentences Contemplated by the Sentencing Guidelines (18 U.S.C. § 3553 (a)(4)(A), (b)(1) & (c))

As detailed in Part II of this memorandum, the correctly calculated guideline range would have been 235 to 293 months, but the guideline range is 180 months due to the statutory maximums of the counts two which Cromer pleaded guilty under the plea agreement.

Avoiding Sentencing Disparities Among Similarly Situated Defendants (18 U.S.C. § 3553 (a)(6))

Section 3553(a)(6) instructs courts to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” When reviewing this factor, the Court should not consider the anticipated lower sentences for Cromer’s cooperating co-defendants. Rather, Section 3553(a)(6) “is concerned with national disparities among the many defendants with similar criminal backgrounds convicted of similar criminal conduct.” *United States v. Benson*, 591 F.3d 491, 505 (6th Cir. 2010). One of the “central reasons” for adopting the sentencing guidelines in the first place “was to ensure stiffer penalties for white-collar crimes and to eliminate disparities between white-collar sentences and sentences for other crimes.” *United States v. Peppel*, 707 F.3d 627, 638-39 (6th Cir. 2013).

The national consensus for stiffer white-collar penalties has intensified in public corruption cases. In November 2004, the Sentencing Commission even amended the guidelines to increase the punishment for corrupt public officials. The Commission explained that “public corruption offenses previously did not receive punishment commensurate with the gravity of such offenses,” especially when compared with other white-collar crimes. U.S.S.G., App’x C, Vol. III, at 82 (Amendment 666). The Commission thus increased the base offense level for public officials because “offenders who abuse their positions of public trust are inherently more culpable than those who seek to corrupt them, and their offenses present a somewhat greater threat to the integrity of governmental process.” *Id.*

Notwithstanding, some courts have continued to sentence white collar defendants without regard to the applicable guidelines, and the Sixth Circuit has frowned upon that practice. In *Peppel*, the court quoted with approval a letter from Jonathan J. Wroblewski, Director, Office of Policy and Legislation, to the Honorable William K. Sessions III (June 28, 2010):

The letter focuses on the sentencing disparity between certain classes of crimes, noting that a different regime exists for certain frauds ‘that has largely lost its moorings to the sentencing guidelines.’ *Id.* at 2. Regarding economic crimes specifically, Mr. Wroblewski writes that ‘[u]nfortunately, we have seen with

increasing frequency district courts sentencing fraud offenders—especially high-loss fraud offenders—inconsistently and without regard to the federal sentencing guidelines.’ *Id.* at 4. He further opines that ‘[t]he current sentencing outcomes in these cases are unacceptable, and the Commission should determine whether some reforms are needed.’ *Id.* at 5.

Peppel at 637.

Agreeing with that reasoning, federal courts have increasingly handed out substantial sentences in public corruption cases where state and local officials have inflicted serious damage on the community. For example, the defendants below received sentences ranging from 14 to 28 years:

- **Kwame Kilpatrick**, No. 10-CR-20403. In March of 2013, Former Detroit Mayor Kwame Kilpatrick and his best friend, Bobby Ferguson, were convicted of racketeering, extortion and bribery, and Kilpatrick was convicted of mail and wire fraud. Kilpatrick pocketed approximately \$840,000 in corrupt personal benefits. His crimes included creating a “pay-to-play” system for the provision of city goods and services which compromised vast swaths of city government, including the water and sewer system, the convention center, the pension system, casino developments and recreation centers; extorting city contractors to improperly steer tens of millions of dollars of city contracts to Ferguson or companies associated with him; and using funds from a non-profit for private trips, spa treatments, golf clubs and other personal purposes, while those funds were intended to improve Detroit neighborhoods and the lives of city youth. The court found that Kilpatrick was responsible for a net improper benefit of \$4,484,423, and sentenced him to 336 months (28 years).

- **James C. Dimora and Frank P. Russo**, Nos. 10-CR-387 and 10-CR-384 (N.D. Ohio); appeal by Dimora pending, No. 12-4004 (6th Cir.). In 2011, former Cuyahoga County Commissioner Jimmy Dimora was convicted of racketeering and bribery-related crimes for accepting items of value in return for helping contractors obtain county contracts, grants, and loans, and helping others secure county employment and salary raises. He was sentenced to 336 months (28 years) in prison based on his receipt of \$451,000 in personal benefits. In a related case, former Cuyahoga County Auditor Frank Russo—who pleaded guilty to accepting more than \$1 million in return for \$21.4 million in county real estate appraisal contracts, as well as other bribery schemes involving jobs and salary increases—received a prison sentence of 262 months (almost 22 years). He is awaiting a hearing on a Rule 35 motion to reduce his sentence based on his testimony in the Dimora trial and others.

- **Mark Ciavarella and Michael Conahan**, No. 09-CR-00272 (M.D. Pa.), *aff'd*, *United States v. Ciavarella*, 716 F.3d 705 (3d Cir. 2013). In 2009, Ciavarella and Conahan, both judges with the Luzerne County Court of Common Pleas, were charged with racketeering for accepting a total of \$2.8 million from the owners of several juvenile detention centers in return for the judges' support in the construction and operation of the facilities, as well as for the judges' failure to disclose their conflicts of interest when placing juvenile offenders at the facilities. Ciavarella was convicted at trial and sentenced to 336 months (28 years) in prison. Conahan pleaded guilty and was sentenced to 210 months (17.5 years) in prison.

- **Donald W. Hill**, No. 3-07-CR-289-M (N.D. Tex.), *aff'd*, *United States v. Reagan, et al.*, 725 F.3d 471 (5th Cir. 2013). In 2009, Hill, a Dallas City Councilman, was convicted of bribery and extortion for helping provide public financing, zoning clearance, and political support to affordable housing developers in exchange for the developers' employment of Hill's associates and appointees as consultants. The evidence at sentencing showed that Hill's associates

received about \$270,000 in fees and other benefits through the scheme, and that losses totaled about \$4.8 million, but there was little if any evidence that Hill himself received money from the scheme. Despite his lack of personal enrichment, Hill was sentenced to 216 months (18 years) in prison.

- **Jonathan Bolar**, No. 09-CR-00138 (E.D. La.), aff'd, United States v. Bolar, No. 10-30879, 483 Fed. Appx. 876, 2012 WL 1994728 (5th Cir. 2012). In 2010, Bolar, a Gretna, Louisiana city councilman, was convicted of extortion for pressuring people to hire his construction firm or give him campaign donations in return for his support in various land-use matters. Although Bolar extorted a total of only \$122,000, the trial court applied an upward variance from the guideline range of 121-151 months because of Bolar's "pervasive extortion," as well as his obstructive conduct. The resulting 204-month (17 year) prison sentence was affirmed by the Fifth Circuit.

- **Larry P. Langford**, No. 08-CR-00245 (N.D. Ala.), aff'd, United States v. Langford, 647 F.3d 1309 (11th Cir. 2011). Langford, the president of the Jefferson County Commission and later the mayor of Birmingham, Alabama, was convicted in 2009 of accepting bribes for steering county bond work to an investment banking firm in exchange for \$240,000 in cash, clothing, and jewelry. Langford was sentenced to 180 months (15 years) in prison based on a net benefit to the investment banking firm of \$5.5 million. The corrupted bond deals later contributed to Jefferson County's \$4 billion bankruptcy filing, the largest municipal bankruptcy in U.S. history before the \$18 billion filing by the city of Detroit.

- **Rod R. Blagojevich**, No. 08-CR-888-1 (N.D. Ill.), appeal pending, No. 11-3853 (7th Cir.). Blagojevich, the former governor of Illinois, was found guilty of a bribery and extortion conspiracy for attempting to trade an appointment to the U.S. Senate and state funding for a hospital and a horse race track, in exchange for \$1.6 million in

campaign contributions or a private sector job for him. Only one of Blagojevich's extortion attempts actually succeeded, resulting in \$25,000 in campaign contributions. In 2011, he was sentenced to 168 months (14 years) in prison.

- **George L. Grace, Sr.**, No. 10-CR-143-SMH-SCR (M.D. La.); appeal pending, No. 12-30926 (5th Cir.). In 2012, Grace, the former Mayor of St. Gabriel, Louisiana, a suburban town of about 10,000 residents outside Baton Rouge, was convicted of racketeering and bribery-related crimes for accepting and soliciting items of value in return for helping businessmen obtain contracts, grants, permits and government property. Grace, who received only \$20,000 in bribe payments, was sentenced to 264 months (22 years) in prison.

The severity of the damage caused by Cromer's corruption equals or surpasses many of these convicted public officials. Further, his otherwise applicable guideline range of 235 to 293 months (19.5 to 24.4 years) is well within the sentences imposed, while his statutory maximum of 180 months (15 years) is on the low end. Notably, the net value of the fraudulent contracts at issue here and Cromer's personal benefit are on the high end of cases cited above. For example, while Kwame Kilpatrick (who received a 28 year sentence) was held responsible for a net improper benefit of \$4,484,423 and a personal benefit of \$840,000, the net improper benefit in this case was over \$5,000,000 and Cromer's personal benefit was about \$1,500,000.

Under these circumstances, in order to further the goal of avoiding unwarranted sentence disparities among defendants with similar records, a sentence of 15 years is warranted.

IV. Conclusion

Given the serious nature and circumstances of Cromer's crimes, the corrupt and deceptive manner in which he carried out his crimes, the seriousness of his offenses, the need to deter others from similarly abusing their power, and the aim to avoid unwarranted sentence disparities among public officials who have inflicted serious damage on the community, the government respectfully requests that the Court impose a sentence of 180 months.

Respectfully submitted,

Date: August 18, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to:

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